

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel, W.A. DREW
EDMONDSON, in his capacity as ATTORNEY
GENERAL OF THE STATE OF OKLAHOMA,
et al.,

Plaintiff,

v.

TYSON FOODS, INC., et al.,

Defendants.

Case No. 4:05-CV-329-TCK-SAJ

**NOTICE OF WITHDRAWAL OF DEFENDANTS' MOTION TO STAY
PROCEEDINGS AND REQUEST FOR EXPEDITED HEARING**

COME NOW Defendants, Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; Cobb-Vantress, Inc.; Cal-Maine Foods, Inc.; Cal-Maine Farms, Inc.; Cargill, Inc.; Cargill Turkey Production, LLC.; George's, Inc.; George's Farms, Inc.; Peterson Farms, Inc.; Simmons Foods, Inc.; and Willow Brook Foods, Inc. (collectively, "Defendants"), and by and through their attorneys, hereby provide notice that they are withdrawing their *Motion to Stay Proceedings and Integrated Brief in Support and Request for Expedited Hearing* ("Motion to Stay"). (Docket No. 125). As grounds for the withdrawal of their Motion to Stay, Defendants state as set forth herein.

1. Defendants filed their Motion to Stay on November 14, 2005, in light of the State of Arkansas's filing of a Motion for Leave to File Bill of Complaint and Bill of Complaint in the United States Supreme Court (the "Supreme Court Action"). *See State of Arkansas v. State of Oklahoma*, Motion for Leave to File Bill of Complaint and Bill of Complaint, No. 220133 Original (2005), attached as Exhibit A to Defendants' Motion to Stay.

2. Because the outcome of the Supreme Court Action would likely significantly impact, if not completely preclude, the claims asserted by Oklahoma in this action, the Defendants filed their Motion to Stay requesting this Court to temporarily halt these proceedings pending the outcome of the Supreme Court Action. Defendants' Motion to Stay was supported by arguments that a stay was appropriate because it would promote judicial economy, facilitate an orderly resolution of disputed issues, and allow all of the parties (including the numerous third-party defendants) to conserve their respective resources.

3. The Defendants have learned that the Supreme Court has denied Arkansas's Motion for Leave to File Bill of Complaint. However, the Supreme Court's decision to deny Arkansas's Motion does not operate as a substantive ruling on any of the merits of Arkansas's claims, including Arkansas's arguments that:

a. Oklahoma's litigation is unconstitutional because it violates the Commerce Clause, the Due Process Clause of the Fourteenth Amendment, and/or the sovereignty guaranteed co-equal States by the United States Constitution;

b. Oklahoma should be enjoined from projecting its statutory and common laws and regulations into Arkansas;

c. Oklahoma should be required to pursue its pollution-based claims through the Arkansas River Basin Compact ("the Compact") before pursuing its claims in district court because the Compact is the established and appropriate mechanism through which Oklahoma and Arkansas have agreed to address matters of interstate water pollution. *See* ARK. CODE ANN. § 15-23-401 and OKLA. STAT. tit. 82, § 1421; and

d. Oklahoma should be enjoined from prosecuting its pollution-related claims before this Court until it has exhausted its administrative remedies before the Compact Commission.

4. Similarly, the Supreme Court's decision does not operate as a substantive ruling on the merits of any positions taken by the Defendants in this matter.

5. Moreover, the Supreme Court's decision does not operate as a permanent bar to Supreme Court review of Arkansas's claims. The decision means only that the Supreme Court has chosen not to exercise its original jurisdiction to hear Arkansas's claims. For example, in *Arkansas v. Oklahoma*, 503 U.S. 91 (1992), the Supreme Court also declined to take original jurisdiction of an interstate water dispute, but the Supreme Court later accepted the case for review on appeal. Therefore, if necessary, Arkansas may again petition the Supreme Court to hear its claims by means of appeal, after the predicate facts and legal arguments related to Arkansas's claims have been developed more fully in another forum.

WHEREFORE, in acknowledgement of the Supreme Court's denial of Arkansas's Motion for Leave to File Bill of Complaint, Defendants hereby provide the Court with notice that they are withdrawing their Motion to Stay.

Respectfully submitted,

BY: /s/ Stephen L. Jantzen
STEPHEN L. JANTZEN, OBA # 16247
PATRICK M. RYAN, OBA # 7864
PAULA M. BUCHWALD, OBA # 20464
RYAN, WHALEY & COLDIRON, P.C.
119 N. ROBINSON
900 ROBINSON RENAISSANCE
OKLAHOMA CITY, OK 73102
Telephone: (405) 239-6040
Facsimile: (405) 239-6766
E-Mail: sjantzen@ryanwhaley.com

-AND-

THOMAS C. GREEN, ESQ.
MARK D. HOPSON, ESQ.
TIMOTHY K. WEBSTER, ESQ.
JAY T. JORGENSEN, ESQ.
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K Street, N.W.
Washington, D.C. 20005-1401
(202) 736-8000 (phone)
(202) 736-8711 (fax)

-AND-

ROBERT W. GEORGE, OBA #18562
KUTACK ROCK LLP
The Three Sisters Building
214 West Dickson Street
Fayetteville, AR 72701-5221
(479) 973-4200 (phone)
(479) 973-0007 (fax)
**ATTORNEYS FOR TYSON FOODS, INC.; TYSON
POULTRY, INC.; TYSON CHICKEN, INC; AND
COBB-VANTRESS, INC.**

BY: /s/ A. Scott McDaniel

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

A. SCOTT MCDANIEL, OBA #16460
CHRIS A. PAUL, OBA #14416
NICOLE M. LONGWELL, OBA #18771
PHILIP D. HIXON, OBA #19121
MARTIN A. BROWN, OBA #18660
JOYCE, PAUL & MCDANIEL, PLLC
1717 South Boulder Ave., Ste 200
Tulsa, OK 74119
ATTORNEYS FOR PETERSON FARMS, INC.

BY: /s/ John H. Tucker

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

THERESA NOBLE HILL, OBA #19119

JOHN H. TUCKER, OBA #9110

COLIN H. TUCKER, OBA #16325

RHODES, HIERONYMUS, JONES,
TUCKER & GABLE

POB 21100

100 W. 5th Street, Suite 400

Tulsa, OK 74121-1100

**ATTORNEYS FOR CARGILL, INC., and CARGILL
TURKEY PRODUCTION, LLC**

BY: /s/ R. Thomas Lay

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

R. THOMAS LAY, OBA #5297

KERR, IRVINE, RHODES & ABLES

201 Robert S. Kerr Ave., Suite 600

Oklahoma City, OK 73102

ATTORNEYS FOR WILLOW BROOK FOODS, INC.

BY: /s/ Randall E. Rose

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

RANDALL E. ROSE, OBA #7753

GEORGE W. OWENS, ESQ.

OWENS LAW FIRM, P.C.

234 W. 13th Street

Tulsa, OK 74119

**ATTORNEYS FOR GEORGE'S, INC. AND
GEORGE'S FARMS, INC.**

BY: /s/ John R. Elrod

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

JOHN R. ELROD, OBA #

VICKI BRONSON, OBA #20574

CONNER & WINTERS, L.L.P.

100 W. Central St., Suite 200

Fayetteville, AR 72701

ATTORNEY FOR SIMMONS FOODS, INC.

BY: /s/ Robert P. Redemann

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

ROBERT P. REDEMANN, OBA #7454

LAWRENCE W. ZERINGUE, ESQ.

DAVID C. SENGER, OBA #18830

PERRINE, MCGIVERN, REDEMANN, REID, BARRY &

TAYLOR, P.L.L.C.

P.O. Box 1710

Tulsa, OK 74101-1710

**ATTORNEY FOR CAL-MAINE FARMS, INC. AND
CAL-MAINE FOODS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2006, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson
OFFICE OF ATTORNEY GENERAL
State of Oklahoma
2300 N. Lincoln Blvd, Suite 112
Oklahoma City, OK 73105
ATTORNEY FOR PLAINTIFF

David Phillip Page
James Randall Miller
Louis Werner Bullock
MILLER KEFFER & BULLOCK
222 S KENOSHA
TULSA, OK 74120-2421
ATTORNEYS FOR PLAINTIFF

Douglas Allen Wilson
Melvin David Riggs
Richard T. Garren
Sharon K. Weaver
RIGGS ABNEY NEAL TURPEN
ORBISON & LEWIS
502 W 6th St
Tulsa, OK 74119-1010
ATTORNEYS FOR PLAINTIFF

Robert Allen Nance
Dorothy Sharon Gentry
RIGGS ABNEY NEAL TURPEN
ORBISON & LEWIS
5801 N Broadway
Ste 101
Oklahoma City, OK 73118
ATTORNEYS FOR PLAINTIFF

John T. Hammons
Attorney at Law
4545 N. Lincoln Blvd., Suite 260
Oklahoma City, OK 73105
ATTORNEY FOR PLAINTIFF

Park Medearis,
Meadearis Law Firm, PLLC
226 W. Choctaw
Tahlequah, OK 74464
**ATTORNEY FOR CITY OF
TAHLEQUAH**

Jo Nan Allen
219 W. Keetoowah
Tahlequah, OK 74464
**ATTORNEY FOR CITY OF
WATTS**

Todd Hembree
219 W. Keetoowah
Tahlequah, OK 74464
**ATTORNEY FOR TOWN OF
WESTVILLE**

and I further certify that a true and correct copy of the above and foregoing will be mailed via regular mail through the United States Postal Service, postage properly paid, on the following who are not registered participants of the ECF System:

William H. Narwold
MOTLEY RICE LLC
20 Church St., 17th Floor
Hartford, CT 06103
ATTORNEYS FOR PLAINTIFF

Elizabeth C Ward
Frederick C. Baker
MOTLEY RICE LLC
28 Bridgeside Blvd
Mount Pleasant, SC 29464
ATTORNEYS FOR PLAINTIFF

C. Miles Tolbert
**SECRETARY OF THE
ENVIRONMENT**
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118

/s/ Stephen L. Jantzen
STEPHEN L. JANTZEN